UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/579,974	05/23/2006	Dariush Behnam	P71198US0	8899

136 7590 01/26/2010

JACOBSON HOLMAN PLLC
400 SEVENTH STREET N.W.
SUITE 600
WASHINGTON, DC 20004

EXAMINER	
PADEN, CAROLYN A	

ART UNIT	PAPER NUMBER
1794	

MAIL DATE	DELIVERY MODE
01/26/2010	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/579,974	BEHNAM, DARIUSH	
	Examiner	Art Unit	
	Carolyn A. Paden	1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *09 November 2009*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1,19 and 21-43* is/are pending in the application.

4a) Of the above claim(s) *19 and 21-24* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1 and 25-43* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

Applicant's election of Group I in the reply filed on November 9, 2009 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

The objection to the specification and the claims has been withdrawn as a result of applicants' response. Also the rejection of the claims under 35 USC 112 has been withdrawn as a result of applicants' response.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1, 25 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hirsh (3052608) in light of Merck and Wikipedia or Conklin (IS 6444253 (column 8l lines 12-18).

Hirsh discloses lanolin transparent emulsions that contain Tween 60, lanolin and water (column 2, lines 23-40). At column 2, lines 1-12 Tween is defined as polyoxyethylene sorbitan monostearate. The ratio of Tween to lanolin is 5 to 1. It is the examiners understanding from the Conklin, Merck Index and Wikipedia that polysorbate and Tween are one in the same compound. Hirsh forms his composition by heating the mixture to 200-220F. Dilution with water forms a clear solution (column 3, lines 4-15). Applicant describes micelle formation in his specification in the paragraph bridging pages 3 and 4 as including mixing the composition until it is clear. Also heating the composition to 80-100 C is mentioned. One would expect that the process in Hirsh would result in a product with the micelle size of the claims because the processing is the same as that utilized by applicant.

Claims 1, 25 and 26 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Hirsh (3052608) for reasons of record used in rejecting claims in the last office action and in light of Merck and Wikipedia.

Hirsh discloses lanolin transparent emulsions that contain Tween 60, lanolin and water (column 2, lines 23-40). At column 2, lines 1-12 Tween is defined as polyoxyethylene sorbitan monostearate. The ratio of Tween

to lanolin is 5 to 1. It is the examiners understanding from the Merck Index and Wikipedia that polysorbate and Tween are one in the same compound. Hirsh forms his composition by heating the mixture to 200-220F. Dilution with water forms a clear solution (column 3, lines 4-15). Applicant describes micelle formation in his specification in the paragraph bridging pages 3 and 4 as including mixing the composition until it is clear. Also heating the composition to 80-100 C is mentioned. One would expect that the process in Hirsh would result in a product with the micelle size of the claims because the processing is the same as that utilized by applicant.

Claims 1, 27 and 38-42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Echols for reasons of record used in rejecting claims in the last office action and in light of Merck and Wikipedia.

Echols discloses an ingredient under the trade name Amisol Clear at paragraph 27 that includes phospholipids, polysorbate 80, glycerin and ethanol. The phospholipids contained in Amisol are derived from lecithin. Phosphatidylserine is a specific phospholipid that is derived from lecithin. The phospholipid can be present in amounts ranging from 3-20%. Polysorbate 80 can be present in amounts as much as 75%. It is the examiners understanding from the Merck Index and Wikipedia that

polysorbate and Tween are one in the same compound. Echols uses a commercial product that must be clear because it is called clear. Applicant describes micelle formation in his specification in the paragraph bridging pages 3 and 4 as including mixing the composition until it is clear. One would expect that the Amisol in Echols would result in a product with the micelle size of the claims because the composition is clear. No unobvious or unexpected result is seen for the recitation of the particular amount of each of the ingredients of claim 41 and 42.

Claims 1, 25-40 and 43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Conklin for reasons of record used in rejecting the claims.

Conklin teaches a composition containing essential oils (Col. 4, Line 11) and polysorbate (Col. 8, Lines 11-15) in a weight ratio of 0.5 to 5 (Col. 3, Lines 64-65). The examples show combinations of essential oil with polysorbate 20 or 80. The claims appear to differ from Conklin in the recitation of the micelle size of the active ingredient. Applicant describes micelle formation in his specification in the paragraph bridging pages 3 and 4 as including mixing the composition until it is clear. Also heating the composition to 80-100 C is mentioned. One would expect that the process,

wherein the composition is prepared by warming the surfactant, adding the flavoring and mixing for 10 minutes, as disclosed in Conklin at column 10, lines 33-38, would result in a product with the micelle size of the claims because the processing is the same as that utilized by applicant. The inclusion of ethanol would have been an expected solvent for orange and lemon oil. Although citral, tea tree oil, lanolin, algal oil, conjugated linoleic acid animal oil and terpene are not mentioned, one would expect these ingredients to be known fragrance or flavorant like an essential oil. It is appreciated that omega fatty acids are not mentioned but if one wanted to enhance the nutritive content of an essential oil, it would have been obvious to include omega fatty acids as an essential nutrient. No unobvious or unexpected result is seen for the recitation of the particular amount of each of the ingredients of claim 43.

The claims are rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for a concentrate comprising the ingredients of the claims, does not reasonably provide enablement for a concentrate consisting of the ingredients of the claims. The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to practice the invention

commensurate in scope with these claims. The specification shows that a concentrate containing essential oil (example 2) contains ethanol as an ingredient at the top of page 8. Ethanol and glycerol are included as ingredients in examples 4 and 7. Creating a clear solution with water is indicated at page 6, lines 11-17. It is not seen that the concentrate of all of the ingredients of the claims is contemplated without diluents.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory

period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carolyn A Paden whose telephone number is (571) 272-1403. The examiner can normally be reached on Monday to Friday from 7 am to 3:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keith Hendricks can be reached by dialing 571-272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Carolyn Paden/

Primary Examiner 1794

.